

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

CARGILL, INCORPORATED, a Delaware corporation,

Plaintiff,

v.

CANBRA FOODS, LTD., a Canadian corporation,  
DOW AGROSCIENCES LLC, a Delaware corporation,  
DOW AGROSCIENCES CANADA, INC., a Canadian corporation,

Defendants.

Case No. 03-1209-MO

No. CV 03-1209-MO

OPINION re: Bill of Costs

**MOSMAN, J.,**

Defendants prevailed in this matter and now seek their costs in the amount of \$183,734.32 (#608). Plaintiff objects. Because some of defendants' costs do not meet the standards outlined in 28 U.S.C. § 1920, their request is GRANTED IN PART AND DENIED IN PART, and they are awarded \$144,529.03.

**Discussion**

The District Court has discretion to award costs, but only those costs identified in 28 U.S.C. §1920 are properly recoverable. *See Alflex Corp. v. Underwriters Labs., Inc.*, 914 F.2d 175, 176-77 (9th Cir. 1990) (citing *Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437 (1987)). Defendants seek reimbursement for costs associated with (1) depositions/transcripts (\$53,324.84); and (2) photocopies of the exhibits, appendices, and other documents filed with the court (\$130,409.48).

Costs are generally available to a prevailing party. Federal Rule of Civil Procedure

54(d)(1) provides that, "costs other than attorneys' fees shall be allowed as of course to the prevailing party unless the court otherwise directs." This rule "creates a presumption for awarding costs to prevailing parties." *Save Our Valley v. Sound Transit*, 335 F.3d 932, 944-45 (9th Cir. 2003). The court "need not give affirmative reasons for awarding costs; instead, it need only find that the reasons for denying costs are not sufficiently persuasive to overcome the presumption in favor of an award." *Id.* at 945. When the court exercises its discretion to deny costs, it must explain its reasons for doing so. *Id.*

#### **I. Deposition Costs**

I grant the deposition/transcript costs.

#### **II. Photocopying Costs**

Photocopying costs are allowed to the extent the copies were "necessarily obtained for use in the case." 28 U.S.C. §1920(4). Furthermore, "[c]opies made for the convenience of counsel are ordinarily not taxable costs." *Roberts v. Charter Nat'l Life Ins. Co.*, 112 F.R.D. 411, 414 (S.D. Fla. 1986) (citing *Fressell v. AT&T Techs., Inc.*, 103 F.R.D. 111, 116 (N.D.Ga. 1984)).

Defendants' calculation of photocopying costs is excessive. It is clear that defendants spent at least \$38,978.10 on imaging capture and converting files from PDF format to TIFF format. Given the complex nature of this case and the parties' agreement to produce documents electronically in TIFF format, I award the \$38,978.10 cost. Defendants also seek \$78,410.58 for outside photocopying costs. Based on my experience with this case and the number of attorneys representing defendants, I deny 50% (\$39,205.29) of those costs because defendants incurred those additional photocopying costs "for the convenience of counsel." *See Summit Tech. Inc. v. Nidek Co.*, 435 F.3d 1371, 1378 (2006) (awarding 50% of all photocopying costs is a somewhat

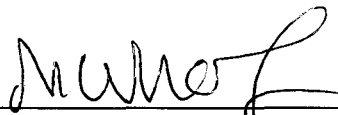
"crude" but reasonable measure).

**III. The Arithmetic**

Total Amount Requested:	\$183,734.32
Extra Copies:	<u>(39,205.29)</u>
Total Award:	\$144,529.03

IT IS SO ORDERED.

DATED this 27 day of September, 2007.

  
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MICHAEL W. MOSMAN  
United States District Court